

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE K		PAGE 1 OF 24 PAGES	
2. AMENDMENT/MODIFICATION NO.  000010		3. EFFECTIVE DATE  April 28, 2004		4. REQUISITION/PURCHASE REQ. NO.  SP0600-04-1377, Amends 002 & 003		5. PROJECT NO. (If applicable)  SP0600	
6. ISSUED BY  DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J. KINGMAN ROAD, SUITE 4950 FT. BELVOIR, VA 22060-6222 BUYER/SYMBOL – LINDA BURLINGAME (DESC-AEP)  PHONE: (703) 767-8542      FAX: (703) 767-8757 EMAIL : <a href="mailto:Linda.Burlingame@dla.mil">Linda.Burlingame@dla.mil</a> P.P. 7.1		CODE  SP0600		7. ADMINISTERED BY (If other than Item 6) CODE			SP0600
8. NAME AND ADDRESS OF CONTRACTOR (NO., street,city,county,State,and ZIP Code)      Phone: _____ Fax: _____ E-Mail: _____ DUNS: _____ Cage Code: _____ Bidder Code: _____				X	9a. AMENDMENT OF SOLICITATION NO.  SP0600-04-R-0080		
					9b. DATED (SEE ITEM 11)  April 23, 2004		
					10a. MODIFICATION OF CONTRACT/ORDER NO.		
					10b. DATED (SEE ITEM 13)		
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS  [ X ] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [ ] is extended, [ X ] is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u>  1  </u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or(c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. <b>FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER.</b> If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required)							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
D. OTHER (Specify type of modification and authority):							
E. IMPORTANT: Contractor [ ] is not, [ X ] is required to sign this document and return <u>  1  </u> copies to the issuing office.							
SEE PAGES 2- 24 Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remain unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME OF CONTRACTING OFFICER MARGOT HAYCOOK			
15B. NAME OF CONTRACTOR/OFFEROR  BY _____ (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA  BY _____ (Signature of Contracting Officer)		16C. DATE SIGNED	

The following additions are hereby incorporated into Solicitation SP0600-04-R-0080:

**Delivery Schedule Changes:**

**NORTHEAST REGION**

1. **Line Item 1102 – PWC Lafayette River, VA:** This line item is hereby added and opened for solicitation. The new schedule page can be found on page 4 of this amendment. The consumption data sheet may be found on page 24 of this amendment.
2. **Line Item 1114, Portsmouth Naval Hospital, VA:** This line item is hereby added and opened for solicitation. The new schedule page can be found on page 5 of this amendment. The consumption data sheet may be found on page 24 of this amendment.
3. **Line Item 106501, Naval Support Activity Philadelphia, PA:** This line item is hereby added and opened for solicitation. The new schedule page can be found on page 6 of this amendment. The consumption data sheet may be found on page 24 of this amendment.
4. **Prospective offerors are encouraged to periodically view the Solicitation on the DESC Natural Gas Home Page for changes, corrections, and additions.**
5. **The closing date and time for this solicitation is November 18, 2004 at 1:00 PM local time, Fort Belvoir, VA.**

The following clauses are hereby revised and updated:

<b><u>CLAUSE NUMBER</u></b>	<b><u>CLAUSE TITLE</u></b>	<b><u>PAGE</u></b>
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**PART I- THE SCHEDULE**

**SECTION B: SUPPLIES OR SERVICES AND PRICES/COST**

**B1.06 SUPPLIES TO BE FURNISHED (NATURAL GAS) (DESC AUG 2004)**

(a) The contract quantities shown below are best estimates only of the Government's requirements for the contract period. The Contractor shall furnish all labor, material, tools, equipment, and incidentals to supply and deliver direct supply natural gas as defined in the STATEMENT OF WORK/SPECIFICATIONS (NATURAL GAS) clause. Contract performance shall be accomplished in accordance with the terms and conditions of this contract.

(b) As used throughout this contract, **Dth** means **dekatherm**; **USD** means **U.S. Dollars**.

(c) The National Stock Number (NSN) that applies to direct supply natural gas is 6830-01-318-5797.

(d) Prices indicated hereunder must include ALL applicable interstate/intrastate pipelines and local distribution company (LDC) fuel loss. The delivery point shall remain as stated in the Schedule.

(e) Prices indicated hereunder as fixed price with Economic Price Adjustment are subject to the ECONOMIC PRICE ADJUSTMENT – MARKET PRICE AND TRANSPORTATION (NATURAL GAS) clause.

(f) Orders may be issued in writing, orally, or by written telecommunications.

(g) For multiyear procurements only, offerors must submit an offer for the total quantity of the multiyear requirement.

(DESC 52.207-9F70)

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## NORTHEAST REGION

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**NOTE:** LDC Fuel loss is to be included in the marketer's adjustment factor.

1102 PWC LAFAYETTE RIVER

1102 Direct Supply Natural Gas to be delivered FOB CITYGATE VIRGINIA NATURAL GAS **via**  
**INTERRUPTIBLE TRANSPORTATION WITH SUPPLY MANAGEMENT** from December 01, 2004 to  
 September 30, 2005.

1102 <u>SUPPLY</u>	TOTAL QUANTITY	10,880	Monthly Guaranteed Quantity	Unit Price	Total Estimated Price
-----					
FIRM FIXED PRICE					
1102 CA	WINTER BASE SUPPLY PRICE		10,880	*	*
1102 CC	SUMMER BASE SUPPLY PRICE		NA	*	*
			Estimated Quantity	Unit Price	Total Estimated Price
-----					
FIXED PRICE WITH EPA:					
1102 AA	SUPPLY INDEX PRICE			*	*
-----					
<u>TRANSPORTATION</u>					
			Estimated Quantity	Unit Price	Total Estimated Price
-----					
FIRM FIXED PRICE					
<u>INTERRUPTIBLE</u>					
1102 CE-IT	WINTER ADJUSTMENT FACTOR		10,880	\$_____	\$_____
1102 CF-IT	SUMMER ADJUSTMENT FACTOR		NA	NA	NA
FPQ	FOR ULTIMATE DELIVERY TO		SUMMER QUANTITY	WINTER QUANTITY	
-----					
110201	PWC LAFAYETTE RIVER INTERRUPTIBLE		0	10,880	
EQ	FOR ULTIMATE DELIVERY TO		SUMMER QUANTITY	WINTER QUANTITY	
-----					
110201	PWC LAFAYETTE RIVER				

1114 PORTSMOUTH NAVAL HOSPITAL, VA

1114 Direct Supply Natural Gas to be delivered FOB CITYGATE COLUMBIA GAS OF VIRGINIA via **INTERRUPTIBLE TRANSPORTATION WITH SUPPLY MANAGEMENT** from December 01, 2004 to September 30, 2005.

**NOTE:** LDC Fuel loss is to be included in the marketer's adjustment factor.

<b>1114</b>	<b>TOTAL QUANTITY</b>	<b>234,100</b>			
<b><u>SUPPLY</u></b>			Monthly Guaranteed Quantity	Unit Price	Total Estimated Price
-----					
<b>FIRM FIXED PRICE</b>					
1114 CA	WINTER BASE SUPPLY PRICE		123,750	*	*
1114 CC	SUMMER BASE SUPPLY PRICE		110,350	*	*
			Estimated Quantity	Unit Price	Total Estimated Price
-----					
<b>FIXED PRICE WITH EPA:</b>					
1114 AA	SUPPLY INDEX PRICE			*	*
<b><u>TRANSPORTATION</u></b>			Estimated Quantity	Unit Price	Total Estimated Price
-----					
<b>FIRM FIXED PRICE</b>					
<b><u>INTERRUPTIBLE</u></b>					
1114 CE-IT	WINTER ADJUSTMENT FACTOR		123,750	\$ _____	\$ _____
1114 CF-IT	SUMMER ADJUSTMENT FACTOR		110,350	\$ _____	\$ _____
FPQ	FOR ULTIMATE DELIVERY TO		SUMMER QUANTITY	WINTER QUANTITY	
-----					
111402	PORTSMOUTH NAVAL HOSPITAL, VA				
	INTERRUPTIBLE		110,350	123,750	
EQ	FOR ULTIMATE DELIVERY TO		SUMMER QUANTITY	WINTER QUANTITY	
-----					
111402	PORTSMOUTH NAVAL HOSPITAL, VA				

1065 NAVAL SUPPORT ACTIVITY, PHILADELPHIA

**NOTE:** Billing services are requested in accordance with clause G702.

1065 Direct Supply Natural Gas to be delivered FOB CITYGATE Philadelphia Gas Works  
via **FIRM OR FIRM EQUIVALENT TRANSPORTATION WITH SUPPLY MANAGEMENT** from December 01,  
2004 to September 30, 2005.

<b>TOTAL QUANTITY</b>		<b>111,100</b>		
			Estimated Quantity	Total Estimated Price
			Unit Price	
-----				
<b>FIXED PRICE WITH EPA:</b>				
1065 AA	SUPPLY INDEX PRICE	111,100	*	*
			Estimated Quantity	Total Estimated Price
			Unit Price	
-----				
<b>FIXED PRICE WITH EPA:</b>				
<b>FIRM</b>		<b>111,100</b>	*	*
1065 AD	WINTER ADJUSTMENT FACTOR	103,600	\$ _____	\$ _____
1065 AE	SUMMER ADJUSTMENT FACTOR	7,500	\$ _____	\$ _____

EQ	FOR ULTIMATE DELIVERY TO	SUMMER QUANTITY	WINTER QUANTITY
-----			
106501	NAVAL SUPPORT ACTIVITY, PHILADELPHIA FIRM	7,500	103,600

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(1) The SIP Table is as follows:

I	II	III	IV	V	VI	VII
Item No.	Delivery Point	Publication/ Table	Pipeline where SIP is applicable	Location where SIP is applicable	Applicable ceiling Provision	Supply Index Price
-----						
1065	CITYGATE PHILADELPHIA GAS WORKS	GAS DAILY, "MONTHLY CONTRACT INDEX"	N/A	HENRY HUB	ALT I	October, 2004

**B700 ECONOMIC PRICE ADJUSTMENT - MARKET PRICE AND TRANSPORTATION (NATURAL GAS)  
(DESC AUG 2004)**

(a) **WARRANTIES.** The Contractor warrants that--

- (1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and
- (2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) **DEFINITIONS.** As used in this clause, the term--

(1) **Supply Index Price (SIP)** is the market price, expressed in dollars per dekatherm (Dth), specified in the publication/table listed in the SIP Table below. It measures the general rate and direction of price movements within a market. However, it does not indicate a mandatory source of supply or area where offerors must obtain gas supplies.

(2) **Adjustment Factor (AF)**, as provided by offerors in the SUPPLIES TO BE FURNISHED clause, is a fixed price per unit of product to compensate an offeror for all costs of contract performance including but not limited to supply costs, **ALL** transportation-related costs which includes **ALL** interstate/intrastate pipeline's and local distribution company (LDC) fuel loss, overhead costs, and margin insofar as these costs vary from the SIP. The AF is composed of two separately priced factors: the Summer AF, which will be used to calculate the contract unit price for deliveries from April 1 through October 31, and the Winter AF, which will be used to calculate the contract unit price for deliveries from November 1 through March 31.

(3) **Local Distribution Company (LDC)** means the local public utility operating in a franchised area without competition that transports gas over its own distribution lines from its interconnection points with an interstate or intrastate pipeline to customers.

(4) **Contract Unit Price** means the sum of the applicable SIP and the applicable AF for that month.

(c) **PRICE ADJUSTMENTS.** The prices payable shall be adjusted as follows:

(1) One price adjustment shall be executed for each month designating the applicable SIP and adjustment factor (Summer AF or Winter AF) for that month. The web location through which monthly price adjustments may be accessed is <http://www.desc.dla.mil/>, **Doing Business with DESC.**

(2) The applicable SIP for each month shall be the first price that is effective in that month as it appears in the designated publication listed in the SIP Table below.

(3) The monthly price adjustment shall apply to all deliveries made on or after the first day of the month and shall remain in effect the remainder of the month.

(4) **CALCULATIONS.**

- (i) All numbers used in or derived through calculations prescribed by this clause shall be rounded to four places.
- (ii) If the SIP is an average of the published prices for a specified date and one or more prices are not published for that date, then the applicable remaining prices published for that date shall be used to determine the average.

(5) **UPWARD CEILING ON ECONOMIC PRICE ADJUSTMENTS.** The ceiling price limitation, Alternatives I and II, are described below:

**ALTERNATIVE I**

(i) The Contractor agrees that any increase in the contract unit price pursuant to this clause shall not exceed 60 percent of the contract unit price effective at time of award. If market conditions warrant, the Government may initiate a contract ceiling increase.

(ii) If, at any time, the Contractor has reason to believe that within the near future a price adjustment required under this clause will exceed the current contract ceiling for the item(s) in question, the Contractor shall notify the Contracting Officer of the expected increase. At the same time, the Contractor shall propose a revised ceiling sufficient to permit completion of remaining contract performance. The Contractor's proposal shall be supported by appropriate explanations and documentation as required by the Contracting Officer.

(iii) If an actual increase in the market price would raise the contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, until the Contracting Officer notifies the Contractor that the ceiling will or will not be raised. In the case where the Contractor receives confirmation that the ceiling will be raised, the Contractor is required to continue performance.

**ALTERNATIVE II**

The ceiling for each installation/activity shall be the applicable LDC's estimated price for natural gas delivered to the burnertip. The Government is not required to order direct supply natural gas under this contract if the projected contract unit price to burnertip is greater than the applicable LDC's estimated price for natural gas delivered to the burnertip.

**B700 (Cont'd)**

(6) **REVISION OF MARKET PRICE INDICATOR.** If any applicable market price indicator is discontinued, its method of derivation is altered substantially, or the Contracting Officer determines that the market price indicator consistently and substantially failed to reflect market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause of the contract.

(d) **EXAMINATION OF RECORDS.** The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(e) **TABLE.** The SIP Table is as follows:

I	II	III	IV	V	VI	VII
Item no.	Delivery point	Publication/table	Pipeline where SIP is applicable	Location where SIP is applicable	Applicable ceiling provision	Supply Index Price Effective (month)

INFORMATION TO BE PROVIDED AT TIME OF AWARD

(DESC 52.216-9F25)

**B704 CONTRACT PRICE CONVERSION (NATURAL GAS) (DESC AUG 2004)**

(a) At any time during contract performance, the Government and the Contractor can mutually agree to convert any fixed price with economic price adjustment contract line item quantity to a firm-fixed price. Either party can initiate such a proposal. The conversion may be effective for specific delivery month(s) or the remaining contract period.

(1) The proposal to convert must identify the contract line item(s), delivery month(s) and quantity(ies) for which conversion is proposed and specify a period for acceptance in LOCAL TIME, FORT BELVOIR, VIRGINIA. The minimum duration for any proposed conversion is one month.

(2) Price negotiations may be held. If the Government accepts a proposal, the contract will be modified to reflect the price(s), month(s) of delivery, and converted quantity to be delivered each month. Acceptance by the Government of the Contractor's price proposal within the time limit allotted by the Contractor for acceptance of the price proposal shall be binding.

(b) The converted quantity will become the monthly guaranteed quantity (MGQ) for the duration of the conversion. The MGQ is guaranteed to be ordered. All gas deliveries during the month for the line item/subline item converted shall first go to satisfying the MGQ requirement. Delivery in any month above the guaranteed quantity will be priced according to the terms under which it was originally awarded. In the event consumption is less than the MGQ, the following procedures shall apply:

(1) In the event the Government's actual monthly requirement is less than the MGQ, the Contractor shall use commercially reasonable efforts to resell the excess. The Government and the Contractor will negotiate an equitable settlement based on the price received for the resold gas. Where supply management is required, it is the Contractor's responsibility to immediately notify the DESC Contracting Officer in writing when it has reason to believe that it will be necessary to deliver less than the MGQ in order to keep the installation in balance.

(2) If an interruption limits the deliveries for limited interruptible or interruptible requirements to less than the MGQ, the procedures outlined in the preceding paragraph shall apply.

(DESC 52.216-9FP3)



**SECTION F: DELIVERIES OR PERFORMANCE****F700 DELIVERIES AND PERFORMANCE (NATURAL GAS) (DESC AUG 2004)**

(a) The Contractor agrees that it has or will secure good and marketable title to gas delivered to the Government, that it has or will have the right without restriction to sell such gas, and that such gas is free from liens and adverse claims of any kind.

(b) **COMMENCEMENT OF DELIVERY.** In order to accomplish delivery of natural gas from the delivery point stated in the Schedule to the end user, the Government intends to enter into transportation agreements with local distribution companies (LDCs) (or interstate/intrastate pipelines, as applicable). The Government expects to enter into such agreements in sufficient time to place orders for delivery of direct supply natural gas by the beginning of the delivery period identified in the Schedule. However, the Government shall have no obligation to place orders for delivery of direct supply natural gas until such agreements are in place.

(c) **PERIOD OF PERFORMANCE AND DELIVERY POINTS.** Performance under this contract shall commence in accordance with the Schedule. Performance shall not extend beyond the delivery period specified in the Schedule except pursuant to the EXTENSION PROVISIONS clause.

(d) **REFUSED OR ACCEPTED QUANTITIES.**

(1) **REFUSED BY LDC.** If, because of supply or system operation constraints of the LDC, the LDC refuses to accept quantities of natural gas ordered by the Government, that quantity will not be considered to have been delivered. Therefore, the Government shall not be obligated to pay for the undelivered supply.

(2) **ACCEPTED BY LDC.** If the LDC accepts and utilizes the gas for its own system delivery, the Government will reimburse the Contractor for the quantity used by the LDC at the lesser of the contract price or the LDC cash out price.

(e) **PENALTIES.** During the term of this contract, should the Contractor deliver natural gas in excess of or less than the ordered amount into any LDC and/or interstate pipeline system for ultimate delivery to any installation(s)/agencies designated in the Schedule, and such under or over delivery results in a charge and/or penalty pursuant to an applicable LDC's and/or pipeline's tariff, or results in any other cost to the Government, the Contractor shall be liable for such charge, penalty, or cost. In the event of an LDC imbalance cashout--

(1) For a positive imbalance (over delivery), the Contractor will be reimbursed at the monthly contract price or the LDC cashout price, whichever is less.

(2) For a negative imbalance (under delivery), if the LDC cashout price is higher than the monthly contract price, any excess cost is the Contractor's responsibility. In addition, the Contractor is responsible for any excess cost associated with purchasing alternative gas supplies or switching to an alternate fuel.

(f) **IMBALANCES.**

(1) In the event of a negative imbalance (under delivery), which the LDC or pipeline allows the Contractor to make up in subsequent months, the price paid for such supplies will be the lesser of the price in effect during the month the under delivery occurred or the price in effect during the month the make up gas supplies are delivered.

(2) In the event of a positive imbalance (over delivery), which the LDC or pipeline allows to be carried over to subsequent months or placed into the customer's storage, the price paid will be the lesser of the price in effect during the month the over delivery occurred or the price in effect the following month.

(g) **METHOD OF DELIVERY.**

(1) **FIRM.** For requirements stated as firm delivery, all quantities ordered by the Government shall be considered firm and guaranteed for delivery by the Contractor to the delivery point.

(2) **LIMITED INTERRUPTIBLE.** For requirements stated as limited interruptible, the Contractor may use any combination of interruptible or firm pipeline transportation, as well as released firm capacity and/or city gate purchases. The Government defines its requirement as limited interruptible since a certain level of reliable delivery is required. Maximum allowable curtailment days have been established for line items requiring limited interruptible transportation service. The curtailment days for each line item are provided in the attachment to the solicitation entitled "**Consumption Data.**"

(3) **INTERRUPTIBLE.** For requirements stated as interruptible, customers can accommodate an unlimited number of curtailment days.

(h) **EXCESS FIRM CAPACITY.** For line items that require the Contractor to deliver and manage firm capacity that the Government has obtained through pipeline assignment or through the released firm capacity market, the Contractor shall manage any excess firm capacity not utilized by the installation, up to the installation's maximum daily quantity (MDQ).

(1) The Contractor shall deliver, on a recallable basis, firm, limited interruptible, or interruptible requirements of other Federal Government installations under DESC contract that are located on the same pipeline. An installation receiving its interruptible requirement on excess firm transportation will be invoiced as if interruptible transportation has been used to deliver its direct supply natural gas interruptible requirement. An offsetting credit will be issued back to the installation that held the excess firm capacity.

**F700 (Cont'd)**

(2) If no other Federal Government installation requires additional firm transportation, the Contractor shall participate in the pipeline's Electronic Bulletin Board (EBB) process and/or make other commercially reasonable efforts for releasing the installation's excess firm capacity. The Contractor shall reflect an appropriate credit to the Government on its invoice.

(3) If preapproved by the DESC Contracting Officer, the capacity reserved by the pipeline for the installation may be used by the Contractor to deliver direct supply natural gas to the Contractor's non-Federal Government customers. The parties will agree on a price for the released capacity to be reflected on the invoice.

(DESC 52.242-9F85)

**SECTION G - CONTRACT ADMINISTRATION DATA****G700 SUBMISSION OF INVOICES FOR PAYMENT (NATURAL GAS) (DESC AUG 2004)**

(a) Invoices for payment for supplies delivered under the contract shall be submitted in accordance with this clause and the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (NATURAL GAS) clause.

**(b) DEFINITIONS.**

(1) **Contractor** means the party responsible for invoicing for natural gas deliveries identified in the Schedule.

(i) The Contractor's invoice shall be dated and postmarked no earlier than the first day of the month following the month of delivery and submitted to the invoice certifying office for each installation as specified by subline item number below. Simultaneously, the Contractor shall provide an additional copy of the invoice to the contract administrator as specified in (c) below.

(ii) The Contractor's invoice shall reflect, by subline item, the price elements applicable to the subline item as set forth in the contract and its modifications, which are applicable to the delivery. Invoicing procedures involving excess Government-owned firm capacity and any resulting credits (or debits) shall be as described in the DELIVERIES AND PERFORMANCE (NATURAL GAS) clause.

(2) **Invoice Certifying Office** means the office responsible for reviewing and certifying the Contractor's invoice for payment.

(i) Invoices will be submitted via electronic or non-electronic means as required by the applicable Invoice Certifying Office.

(ii) The Government is responsible for payment of quantities received by the local distribution company (LDC) unless otherwise noted in the Schedule. If there is a discrepancy between the Contractor's invoiced quantity and the quantity received by the LDC, the Government will pay the lesser of the two quantities.

(iii) The Government has the right to—

(A) Unilaterally adjust the downward quantities indicated on the Contractor's invoice downward if documentation available to the Government indicates that a quantity received on behalf of the installation is less than the quantity invoiced by the Contractor; and

(B) Adjust future payments due the Contractor if any previous quantity for which the Contractor invoiced and was paid is determined to be inaccurate.

(C) The Invoice Certifying Official shall provide the Contractor with an explanation of the reasons for any adjustment under (A) and (B) above. The Contractor shall direct all disputes related to invoice adjustments to the DESC Contracting Officer.

(3) **Payment Office** means the office responsible for making payment to the Contractor.

(c)

Line Item/  
Subline Item

Number

Invoice Certifying Office

Payment Office

Contractor Administrator

**INFORMATION TO BE PROVIDED AT TIME OF AWARD**

(DESC 52.232-9FD5)

**SECTION H - SPECIAL CONTRACT REQUIREMENTS**

**H700        TRANSPORTATION ASSISTANCE AND NOTIFICATION OF TARIFF/RATE CHANGES (NATURAL GAS)  
(DESC AUG 2004)**

(a) The Contractor shall cooperate, as necessary, with the Government's effort in securing and arranging for transportation of direct supply natural gas by the LDC and/or interstate pipeline to the installation(s)/agencies designated in the Schedule.

(b) The Contractor shall give the Contracting Officer and the installation written notice of the filing of an application for gas transportation tariff/rate changes and/or the scheduling of a tariff/rate hearing that would impact installations.

(DESC 52.247-9F90)

## PART II - CONTRACT CLAUSES

### SECTION I: CONTRACT CLAUSES

#### 11.03-6 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (NATURAL GAS) (DESC AUG 2004)

(a) **INSPECTION/ACCEPTANCE.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. Acceptance occurs at the delivery point stated in the Schedule. The Contractor expressly warrants and implies that the items delivered hereunder meet or exceed the terms and conditions of the delivery specifications of the local distribution company (LDC) receiving the gas on behalf of the Government. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) **LIMITATION OF LIABILITY.** Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(c) **ASSIGNMENT.** The Contractor or its assignee may assign its rights to receive payment, due as a result of performance of this contract, to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes a payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(d) **CHANGES.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(e) **DISPUTES.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(f) **DEFINITIONS.** The clause at FAR 52.202-1, DEFINITIONS, is incorporated herein by reference.

(g) **EXCUSABLE DELAYS.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(h) **INVOICE.** The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date and number;
- (3) Contract number, contract line item number, and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price, and extended price of the item delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of

lading;

- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice, and
- (9) **Taxpayer Identification Number (TIN).** The Contractor shall include its TIN on the invoice only if required elsewhere in this

contract.

(10) **Electronic funds transfer (EFT) banking information.**

(i) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(ii) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer – Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration), or applicable agency procedures.

(iii) EFT banking information is not required if the Government waived the requirement to pay by EFT.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

**11.03-6 (Cont'd)**

(i) **PATENT INDEMNITY.** The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(j) **PAYMENT.**

(1) **Items accepted.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) **Prompt payment.** The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) **Electronic Funds Transfer (EFT).** If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) **Discount.** In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) **Overpayments.** If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(k) **POSSESSION, TITLE, AND RISK OF LOSS.** Control and possession of, title to and responsibility for, and risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until the supplies pass to the Government at the delivery point as stated in the Schedule. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(l) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE.**

(1) The Government reserves the right to terminate this contract, or any part thereof, for its sole convenience at any time. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms and conditions of this contract, the Contractor shall be paid at percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall be paid for any work performed or costs incurred which reasonably could have been avoided.

(2) For certain line items, the contract term is two years. If, for any two-year line item, the Government forecasts that the contract price will exceed the LDC price for the second contract year, it is likely that the Government will terminate that line item for the convenience of the Government after one year.

(m) **TERMINATION FOR CAUSE.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) **OTHER COMPLIANCES.** The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations applicable to its performance under this contract.

(o) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986, 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(p) **ORDER OF PRECEDENCE.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services;
- (2) The Assignments; Disputes, Payments; Invoices; Other Compliances; and Compliance with Laws Unique to Government Contracts paragraphs of this clause;
- (3) The clause at 52.212-5;
- (4) Addenda to this solicitation or contract, including any license agreements for computer software;
- (5) Solicitation provisions if this is a solicitation;

**II.03-6 (Cont'd)**

- (6) Other paragraphs of this clause;
- (7) Standard Form 1449;
- (8) Other documents, exhibits, and attachments; and
- (9) The specification.

(q) **CENTRAL CONTRACTOR REGISTRATION (CCR).** See the CENTRAL CONTRACTOR REGISTRATION (ALTERNATE A) clause.

(FAR 52.212-4, **tailored**/DESC 52.212-9F60)

**II.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (JUN 2004)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

52.233-3, Protest After Award (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

**[Contracting Officer shall check as appropriate.]**

☒ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jul 1995), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

☐ (2) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).

☒ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer.) (15 U.S.C. 657a).

☐ (4) (i) 52.219-5, Very Small Business Set-Aside (Jun 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994.

☐ (ii) Alternate I (Mar 1999) of 52.219-5.

☐ (iii) Alternate II (Jun 2003) of 52.219-5.

☒ (5) (i) 52.219-6, Notice of Total Small Business Set-Aside (Jun 2003) (15 U.S.C. 644).

☐ (ii) Alternate I (Oct 1995) of 52.219-6.

☐ (iii) Alternate II (Mar 2004) of 52.219-6.

☒ (6) (i) 52.219-7, Notice of Partial Small Business Set-Aside (Jun 2003) (15 U.S.C. 644).

☐ (ii) Alternate I (Oct 1995) of 52.219-7.

☐ (iii) Alternate II (Mar 2004) of 52.219-7.

☒ (7) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).

☒ (8) (i) 52.219-9, Small Business Subcontracting Plan (Jan 2002) (15 U.S.C. 637 (d)(4)).

☐ (ii) Alternate I (Oct 2001) of 52.219-9.

☐ (iii) Alternate II (Oct 2001) of 52.219-9.

☒ (9) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).

☒ (10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Jun 2003) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

☐ (ii) Alternate I (Jun 2003) of 52.219-23.

**II.04 (Cont'd)**

☐ (11) 52.219-25, Small Disadvantaged Business Participation Program – Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

☐ (12) 52.219-26, Small Disadvantaged Business Participation Program – Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

☒ (13) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).

☐ (14) 52.222-3, Convict Labor (Jun 2003) (E.O. 11755).

☒ (15) 52.222-19, Child Labor – Cooperation with Authorities and Remedies (Jun 2004) (E.O. 13126).

☒ (16) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

☒ (17) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

☒ (18) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).

☒ (19) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

☒ (20) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).

☐ (21) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).

☐ (ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

☐ (22) 52.225-1, Buy American Act – Supplies (Jun 2003) (41 U.S.C. 10a-10d).

☐ (23) (i) 52.225-3, Buy American Act – Free Trade Agreements – Israeli Trade Act (Jan 2004) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78).

☐ (ii) Alternate I (Jan 2004) of 52.225-3.

☐ (iii) Alternate II (Jan 2004) of 52.225-3.

☐ (24) 52.225-5, Trade Agreements (Jun 2004) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

☐ (25) 52.225-13, Restriction on Certain Foreign Purchases (Dec 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

☐ (26) 52.225-15, Sanctioned European Union Country End Products (Feb 2000) (E.O. 12849).

☐ (27) 52.225-16, Sanctioned European Union Country Services (Feb 2000) (E.O. 12849).

☐ (28) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

☒ (29) 52.232-30, Installation Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

☒ (30) 52.232-33, Payment by Electronic Funds Transfer – Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

☐ (31) 52.232-34, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration (May 1999) (31 U.S.C. 3332).



**11.04 (Cont'd)**

☐ (32) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).

☐ (33) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

☐ (34) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. 1241 and 10 U.S.C. 2631).

☐ (ii) Alternate I (Apr 1984) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

**[Contracting Officer shall check as appropriate.]**

☐ (1) 52.222-41, Service Contract Act of 1965, as Amended (May 1989) (41 U.S.C. 351, et seq.).

☐ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

☐ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple Year and Option Contracts) (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

☐ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

☐ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (May 1989) (41 U.S.C. 351, et seq.).

(d) **COMPTROLLER GENERAL EXAMINATION OF RECORD.** The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, AUDIT AND RECORDS -- NEGOTIATION.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the DISPUTES clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph, in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (Dec 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

(v) 52.222-41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

**II.04 (Cont'd)**

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx. 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(FAR 52.212-5)

**II.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (JUN 2004)**

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

☒ 52.203-3 Gratuities (APR 1984) (10 U.S.C. 2207)

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

☐ 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

☒ 252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

☐ 252.219-7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

☐ 252.225-7001 Buy American Act and Balance of Payments Program (APR 2003) (41 U.S.C. 10a-10d, E.O. 10582).

☐ 252.225-7012 Preference for Certain Domestic Commodities (JUN 2004) (10 U.S.C. 2533a).

☐ 252.225-7014 Preference for Domestic Specialty Metals (APR 2003) (10 U.S.C. 2533a).

☐ 252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (APR 2003) (10 U.S.C. 2533a).

☐ 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (MAY 2004);  
([ ☐ Alternate I (APR 2003)) (10 U.S.C. 2534 and Section 8099 of Pub. L. 104-61 and similar sections in subsequent DoD appropriations acts).

☐ 252.225-7021 Trade Agreements (JAN 2004) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

☐ 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

☐ 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

☒ 252.225-7036 Buy American Act – Free Trade Agreements – Balance of Payments Program (JAN 2004);  
([ ☐ Alternate I (JAN 2004)) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

☐ 252.225-7038 Restriction on Acquisition of Air Circuit Breakers (APR 2003) (10 U.S.C. 2534(a)(3)).

☐ 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (OCT 2003) (Section 8021 of Pub. L. 107-248).

**11.05 (Cont'd)**

- ☐ 252.227-7015 Technical Data – Commercial Items (NOV 1995) (10 U.S.C. 2320).
- ☐ 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
- ☐ 252.232-7003 Electronic Submission of Payment Requests (JAN 2004) (10 U.S.C. 2227).
- ☒ 252.243-7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- ☐ 252.247-7023 Transportation of Supplies by Sea (MAY 2002); (☐ Alternate I (MAR 2000)); (☐ Alternate II (MAR 2000)); (☐ Alternate III (MAY 2002)) (10 U.S.C. 2631).
- ☐ 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

- ☐ 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (APR 2003) (10 U.S.C. 2533a).
- ☐ 252.247-7023 Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
- ☐ 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(DFARS 252.212-7001)

**128.26 DUTY-FREE ENTRY (JAN 2004)**

(a) **DEFINITIONS.** As used in this clause—

- (1) **Customs territory of the United States** means the States, the District of Columbia, and Puerto Rico.
- (2) **Eligible product** means—

(i) **Designated country end product** or **Caribbean Basin country end product**, as defined in the TRADE AGREEMENTS clause of this contract;

(ii) **Free Trade Agreement country end product**, as defined in the TRADE AGREEMENTS clause or the BUY AMERICAN ACT – FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM clause of this contract; or

(iii) **Canadian end product**, as defined in Alternate I of the BUY AMERICAN ACT – FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM clause of this contract.

(3) **Qualifying country** and **qualifying country end product** have the meanings given in the TRADE AGREEMENTS clause, the BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM clause, or the BUY AMERICAN ACT – FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM clause of this contract.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

- (1) End items that are eligible products or qualifying country end products;
- (2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.-made end products to be delivered under this contract; or
- (3) Other supplies for which the Contractor estimates that duty will exceed \$200 per shipment into the customs territory of the United States.

(c) The Contractor shall—

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

- (i) Scrap or salvage; or
- (ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

- (1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

**I28.26 (Cont'd)**

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

- (i) Military department in care of the Contractor, including the Contractor's delivery address; or
- (ii) Military installation; and

(2) Include the following information:

- (i) Prime contract number and, if applicable, delivery order number.
- (ii) Number of the subcontract for foreign supplies, if applicable.
- (iii) Identification of the carrier.

(iv) (A) For direct shipments to a U.S. military installation, the notation: **"UNITED STATES GOVERNMENT,**

**DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE-GNTE, 207 New York Avenue, Staten Island, New York, 10305-5013, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates."**

(B) If the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the Contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free certificate. (If the shipment will be consigned to a Contractor's plant and no duty-free entry certificate is required due to a trade agreement, the Contractor shall claim duty-free entry under the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, e.g., for DCMA Dayton, S3605A.

**(f) PREPARATION OF CUSTOMS FORMS.**

(1) (i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with Sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall—

(1) Prepare (if this Contractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) **"UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE";** and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of qualifying country supplies to be accorded duty-free entry, that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the qualifying country supplier and shall include in the notice—

(1) The Contractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

**I28.26 (Cont'd)**

- (8) Date of the last scheduled delivery under the subcontract for foreign supplies;
- (9) List of items purchased;
- (10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—
  - (i) Scrap or salvage; or
  - (ii) Competitive sale made, directed, or authorized by the Contracting Officer;
- (11) Qualifying country of origin; and
- (12) Scheduled delivery date(s).
- (i) This clause does not apply to purchases of qualifying country supplies in connection with this contract if—
  - (1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and
  - (2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.
- (j) The Contractor shall—
  - (1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—
    - (i) Qualifying country components; or
    - (ii) Nonqualifying country components for which the Contractor estimates that duty will exceed \$200 per unit;
  - (2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and
  - (3) Include in applicable subcontracts—
    - (i) The name and address of the ACO for this contract;
    - (ii) The name, address, and activity address number of the contract administration office specified in this contract; and
    - (iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

(DFARS 252.225-7013)

**I174.03 SUPPLY COMMITMENTS FOR SMALL BUSINESS CONCERNS (NATURAL GAS) (DESC AUG 2004)****(a) SMALL BUSINESS SET-ASIDE OFFERS.**

(1) In order to comply with statutory small business requirements, an offeror who certifies as a small business and offers on a line item set aside for exclusive small business participation must propose to furnish direct supply natural gas from a well owned and operated by a small producer(s), which is defined by the Small Business Administration to include all affiliates and subsidiaries.

(2) In accordance with the INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (NATURAL GAS) clause, the offeror meeting the criteria in paragraph (a)(1) above must submit with its initial offer a supply commitment (which may be contingent upon award) from a small business producer(s) to be utilized during contract performance. The supply commitment letter shall specifically state that product delivered shall be product originating from the qualified small business producer's own well. Supply commitment letters from the proposed small business producer must state, at a minimum, the type of product, total quantities of product for all items offered, and contract ordering period. Pools are allowed only if it is clearly demonstrated prior to award that all producers in the pool are qualified small businesses and the offeror has a direct relationship with the small business pool aggregator. Failure to provide such documentation will make the offeror nonresponsive and ineligible for award.

**(b) HUB-ZONE SMALL BUSINESS OFFERS.**

(1) In order to comply with statutory small business requirements, a small business offeror who requests the HUBZone Price Evaluation Preference (HPEP) described in the NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS clause must propose to furnish direct supply natural gas from a well owned and operated by a HUBZone-qualified small producer(s), which is defined by the Small Business Administration to include all affiliates and subsidiaries.

(2) Prior to award and during contract performance, the offeror must clearly demonstrate a direct relationship between the natural gas well(s) owned and operated by a HUBZone small business producer and the offeror. In accordance with the INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (NATURAL GAS) clause, the offeror meeting the criteria in paragraph (a)(1) above must submit with its initial offer a supply commitment (which may be contingent upon award) from a HUBZone-qualified small business producer(s) to be utilized during contract performance. The supply commitment letter shall specifically state that product delivered in support of the 10 percent HPEP line item shall be product originating from the HUBZone-qualified small business producer's own well. Pools are allowed only if it is clearly demonstrated prior to award that all producers in the pool are HUBZone-qualified small businesses and the offeror has a direct relationship with the small business pool aggregator. Failure to provide such documentation will make the offeror nonresponsive and ineligible for award.

**(c) CONTRACT PERFORMANCE.**

(1) The name(s) and address(es) of all small business producers or HUBZone small business producers shall be incorporated into the contract award document.

**I174.03 (Cont'd)**

(2) If circumstances are such that, during the term of this contract, a previously approved small business producer or HUBZone small business producer as designated in the award document will no longer provide the product, the Contractor agrees to immediately notify the Contracting Officer of the name and address of the replacement small business producer or HUBZone small business producer for approval by the Contracting Officer.

(3) Failure to accomplish any of the following may constitute grounds for terminating the contract for cause:

(i) Failure to obtain approval of a replacement business producer or HUBZone small business producer; or

(ii) Failure to comply with the statutory requirement that all natural gas delivered under the small business set-aside or 10 percent HPEP line item shall be from a well owned and operated by a small business producer(s) or HUBZone small business producer(s). When required, the Contractor will be required to provide adequate documentation to the Contracting Officer supporting deliveries by the appropriate small business source.

(4) Termination under this clause shall not constitute a waiver of the Government's rights under law or provided elsewhere in this contract.

(DESC 52.219-9F50)

**I174.07 SUPPLY COMMITMENTS FOR SMALL DISADVANTAGED BUSINESS CONCERNS (SDB PRICE EVALUATION ADJUSTMENT) (NATURAL GAS) (DESC AUG 2004)**

(a) This clause applies only to Federal Civilian items that may be contained in this acquisition.

(b) In order to comply with statutory small disadvantaged business requirements, an offeror who certifies as a Small Disadvantaged Business (SDB) and who requests the price evaluation adjustment described in the NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (ALTERNATE I) clause must propose to furnish direct supply natural gas from a well owned and operated by a small domestic producer(s), which is defined by the Small Business Administration to include all affiliates and subsidiaries. Intermediaries and middlemen, such as other suppliers and marketers, regardless of size, are not allowed.

(c) Prior to award and during contract performance, the offeror must clearly demonstrate a direct relationship between the natural gas well(s) owned and operated by a domestic small business producer and the offeror. In accordance with the INSTRUCTION TO OFFERORS – COMMERCIAL ITEMS (NATURAL GAS) clause, the offeror meeting the criteria in paragraph (b) above must submit with its initial offer a supply commitment (which may be contingent upon award) from a domestic small business producer(s) to be utilized during contract performance. The supply commitment letter shall specifically state that product delivered in support of the line item (or 10 percent adjustment) shall be product originating from the domestic small business producer's own well. Supply commitment letters from the proposed small business producer must state, at a minimum, the type of product, total quantities of product for all items offered, and contract ordering period. Pools are allowed only if it is clearly demonstrated prior to award that all producers in the pool are domestic small business and the offeror has a direct relationship with the small business pool aggregator. Failure to provide such documentation will make the offeror nonresponsive and ineligible for award.

(d) The name(s) and address(es) of all approved domestic small business producers shall be incorporated into the contract award document.

(e) If circumstances are such that, during the term of this contract, a previously approved small business producer as designated in the award document will no longer provide the product, the Contractor agrees to immediately notify the Contracting Officer of the name and address of the replacement small business producer for approval by the Contracting Officer.

(f) Failure to accomplish any of the following may constitute grounds for terminating the contract for cause:

(1) Failure to obtain approval of a replacement small business producer; or

(2) Failure to comply with the statutory requirement that all natural gas delivered under the line item (or 10 percent adjustment) shall be from a well owned and operated by a domestic small business producer(s).

(DESC 52.219-9F41)

**I209.08 EXTENSION PROVISIONS (NATURAL GAS) (DESC AUG 2004)**

(a) For line items priced as fixed-price with economic price adjustment, the Government reserves the right to unilaterally extend performance one or more times in accordance with the existing contracting terms and provisions, so long as the total additional performance does not exceed six months.

(b) For line items priced as firm-fixed-price, the Government may request extension of performance, one or more times, at the existing fixed price and in accordance with the existing contract terms and provisions, so long as the total additional performance does not exceed six months. If the Contractor declines to extend at the existing price, the Government may propose a new firm-fixed-price for the extension. Extension of Firm-Fixed-Price line items must be accomplished by agreement of all parties (bilateral modification). Failure to agree will result in expiration of the contract at the end of the current performance period.

(c) Notice of unilateral contract extension or request for bilateral extension will be furnished to the Contractor not later than 45 days prior to the expiration of the contract or any extension thereof. However, nothing in this clause precludes the Contractor from agreeing to an extension of the contract if the Government fails to issue the notice prior to 45 days.

(DESC 52.217-9F30)

**1700 GAS ORDERING PROCEDURES (NATURAL GAS) (DESC SEP 2004)**

(a) Each ordering office will determine the duration of its order. An order shall cover a delivery period no less than one month and no greater than one year. Orders may be issued in writing or orally with verbal orders being confirmed by a written delivery order within one day. The Ordering Office's failure to issue a written delivery order, or the Contractor's failure to receive a written delivery order, does not relieve the Contractor from its obligation to perform in accordance with the verbal order.

(b) The requirements specified in the consumption data of the contract will serve as the Government's order unless superceded by an order as placed in accordance with paragraph (a) above.

(c) The Government shall notify the Contractor of the ordered volumes of gas for any given period at least two working day prior to the 25th calendar day of the month preceding delivery. The Contractor, in turn, shall nominate the Government's requirement(s) to the local distribution company (LDC) or pipeline prior to the applicable LDC and/or Pipeline Nomination Deadline Date. If required, the Contractor shall nominate daily volumes of gas to be delivered under the contract to the pipeline and/or LDC.

(d) During the month of delivery, the Government may over/under consume or increase or decrease the quantity specified in its order by 10 percent. **This percentage variation only applies to the fixed price with economic price adjustment portion of a monthly order.** The contract price shall apply to all quantities consumed within the allowed 10 percent variation of the monthly order. When supply management is required, the Contractor shall notify the Contracting Officer of any consumption outside the 10 percent allowance.

(1) Gas delivered to the Government in excess of the 10 percent variation shall be priced at the Contractor's commercially reasonable cost of acquiring the additional gas if the additional delivery is necessary to meet the Government's requirements.

(2) If the Government consumes less than the monthly order, less 10 percent, or decreases the monthly order by 10 percent, the Contractor shall make commercially reasonable efforts to resell the deficient quantity. The deficient quantity is defined as the monthly order less 10 percent, less the quantity actually consumed or decreased by the Government. If the commercially reasonable price the Contractor receives for the deficient quantity is less than the contract price, the Contractor shall be entitled to compensation in the amount of the deficient quantity times the difference. If the commercially reasonable price the Contractor receives for the deficient quantity is more than the contract price, the Contractor, on its next invoice, shall credit the Government in the amount of one half the deficient quantity times the difference.

(e) Questions arising from individual delivery orders shall be addressed to the installation's individual Ordering Officer identified below. Any failure to resolve issues resulting from an individual delivery order shall be referred to the DESC Contracting Officer.

(f) Accounting and appropriation data will be set forth on individual delivery orders issued under the contract. Funds shall be obligated for the entire quantity stated on the delivery order.

(g) The following ordering offices are authorized to issue orders hereunder:

LINE ITEM/ <u>SUBLINE ITEM NO.</u>	ORDERING <u>OFFICE</u>
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INFORMATION TO BE PROVIDED AT TIME OF AWARD

(DESC 52.216-9FD1)

**SECTION L: INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS**

**L2.08-2 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (NATURAL GAS) (DESC AUG 2004) OSP**

## SP0600-04-R-0080 Consumption Data

LINE ITEM NUMBER 11020106  
 INSTALLATION PWC LAFAYETTE RIVER  
 TRANSPORTATION IT

MONTH	Total Quantity	Curtailment Days per Month	EPA Estimated Quantity	MGQ	FPQ
JANUARY	2,800	31	0	0	2,800
FEBRUARY	3,000	28	0	0	3,000
MARCH	2,280	31	0	0	2,280
APRIL	0	30	0	0	0
MAY	0	31	0	0	0
JUNE	0	30	0	0	0
JULY	0	31	0	0	0
AUGUST	0	31	0	0	0
SEPTEMBER	0	30	0	0	0
OCTOBER	0	31	0	0	0
NOVEMBER	0	30	0	0	0
DECEMBER	2,800	31	0	0	2,800

LINE ITEM NUMBER 111402  
 INSTALLATION PORTSMOUTH NAVAL HOSPITAL, VA  
 TRANSPORTATION IT

MONTH	Total Quantity	Curtailment Days per Month	EPA Estimated Quantity	MGQ	FPQ
JANUARY	32,550	31	0	0	32,550
FEBRUARY	32,000	28	0	0	32,000
MARCH	32,000	31	0	0	32,000
APRIL	23,250	30	0	0	23,250
MAY	18,100	31	0	0	18,100
JUNE	17,700	30	0	0	17,700
JULY	16,300	31	0	0	16,300
AUGUST	18,000	31	0	0	18,000
SEPTEMBER	17,000	30	0	0	17,000
OCTOBER	0	31	0	0	0
NOVEMBER	0	30	0	0	0
DECEMBER	27,200	31	0	0	27,200

LINE ITEM NUMBER 106501  
 INSTALLATION NAVAL SUPPORT ACTIVITY, PHILADELPHIA  
 TRANSPORTATION F

MONTH	Total Quantity	Curtailment Days per Month	EPA Estimated Quantity	Monthly Buy
JANUARY	28,700	0	28,700	
FEBRUARY	25,600	0	25,600	
MARCH	24,200	0	24,200	
APRIL	7,500	0	7,500	
MAY	0	0	0	
JUNE	0	0	0	
JULY	0	0	0	
AUGUST	0	0	0	
SEPTEMBER	0	0	0	
OCTOBER	0	0	0	
NOVEMBER	0	0	0	
DECEMBER	25,100	0	25,100	